

1 "Answer: Me and Sampson was -- me and Mr. Wheeler --"  
2 and then there was an objection, and then going over to  
3 Page 291, "Question: Tell us about that deal that you were just  
4 talking about.

5 "Answer: Me and Sampson was at the pizza place  
6 waiting for Daugherty to come in.

7 "Question: Okay. And what was he bringing?

8 "Answer: Cocaine.

9 "Question: How much cocaine?

10 "Answer: Seven keys.

11 "Question: And when you say "keys", that's a  
12 kilogram?

13 "Answer: Kilogram.

14 "Question. Did he arrive?

15 "Answer: Yes, ma'am.

16 "Question: And what happened after he arrived?

17 "Answer: We went to the house and we opened up the  
18 compartment, unloaded it, and take it back to the Barkleaf  
19 house.

20 "Question: When you say "the house", that would be  
21 your house?

22 "Answer: We went to my house.

23 "Question: And who unloaded that cocaine?

24 "Answer: Sampson and Daugherty.

25 "Question: Okay. And what happened when you got to

1 the Barkleaf house?

2 "Answer: We sold it from there.

3 "Question: Okay. When you say "we", who sold it?

4 "Answer: Rabbi, Sampson, Hinton, me, Lloyd.

5 Everybody that, associated with that house."

6 THE COURT: Okay. And Mr. Watson?

7 MR. WATSON: Judge, I won't belabor this one. It's  
8 the same argument that we would have to agree this is similar  
9 testimony that we heard with regard to Paragraph 112. So I  
10 would make the same argument as to the one I made to  
11 Paragraph 112.

12 THE COURT: Okay. I do find that the government has  
13 met its burden of proof on this, and the objection is overruled  
14 and the references will be included.

15 Now, other than your general objection to  
16 Paragraph 115 about the drug weights, which is just a total  
17 based on everything we've just done, Mr. Watson, the only other  
18 thing, as I understand it, is your gun objection. Perhaps while  
19 we're talking about drug weights I think the government may have  
20 some additional ones. So let's do that before we take up the  
21 gun issue.

22 So first there's a 220-kilogram of cocaine objection.  
23 Which paragraph is that?

24 MS. EVERHART: Your Honor, these are, the basis of my  
25 objection is I think that these things should be included and

1 they have not been included.

2 THE COURT: Okay. And where is it that you think it  
3 should be included? Any particular place, or...

4 MS. EVERHART: Well, it would be wherever the summer  
5 of 2008 begins.

6 THE COURT: I guess that's -- we have offense conduct  
7 19 in July, 2008. So...

8 MS. EVERHART: And then it goes back to 2005 and 2007.  
9 So I would say probably, probably after Paragraph 32.

10 THE COURT: Okay. Now, so based on Mr. Hinton's  
11 testimony that he received cocaine every week from Wheeler,  
12 Lloyd and other co-conspirators, you have argued for inclusion  
13 of 220 kilograms of cocaine, and this is transcript Pages 781  
14 and 782. All right. So this is Mr. Hinton and the context here  
15 is discussions about what happened at Barkleaf Drive; is that  
16 right?

17 MS. EVERHART: Yes.

18 THE COURT: All right. He's asked whether he saw  
19 anybody breaking down drugs, and he says at Barkleaf Drive he  
20 saw Black break it down and sometimes Sammy. He'll just be,  
21 he'll be present of the narcotics being there.

22 "And when shipments came in, who was in town that  
23 normally was not?

24 "Answer: Mr. Sammy." That's Page 781.

25 And on 782, "Anyone else?

1 "Sampson. He'll be coming.

2 "Answer: One will come in at one time and then  
3 another one will fly in after that person here."

4 "Okay. Around the summer of 2008 up till May of 2010  
5 when you were arrested, about how much cocaine were you getting  
6 from the people at Barkleaf?

7 "Answer: I don't like to do the exaggeration, but I  
8 can't even keep count. So I mean, 'cause I was on the move.

9 "Question: Were you getting grams or ounces?

10 "Answer: No, ma'am.

11 "Question. Kilos?

12 "Answer: No, ma'am. It was, it was always half a key  
13 or better.

14 "How often was that happening?

15 "I say within a week I move five kilos. Within a  
16 week. That's on a bad day. If I got a bad day, I probably do  
17 about six, seven on a good day."

18 So that's the testimony.

19 MS. EVERHART: Yes, Your Honor. And I think what he  
20 was trying to say was five kilos a week and at least five or six  
21 in a week, because there was later cross-examination on that  
22 topic and it was clarified.

23 THE COURT: Well, previously we have this specific  
24 testimony that you've pointed to about, you know, you asking the  
25 question about who was distributing and you'd get the response

1 "all of us", who is "all of us", and they would go through each  
2 one and list Mr. Lloyd included. And you have argued that even  
3 though there were multiple references, that because of the  
4 conspiracy, Mr. Lloyd should be attributed with all of those  
5 arguments that we were talking about earlier. I think, if I  
6 understand your argument correctly.

7 MS. EVERHART: Yes.

8 THE COURT: Now when we get to this we've got the  
9 Barkleaf house where numerous people involved in the conspiracy  
10 are getting the drugs from there and distributing. And it's  
11 still a preponderance standard. You still have to show that, if  
12 you want this included with respect to Mr. Lloyd, that it was  
13 something that he knew about. And your argument is he did know  
14 about it --

15 MS. EVERHART: Well, Your Honor --

16 THE COURT: -- and he participated in it.

17 MS. EVERHART: I think the standard is if it was  
18 reasonably foreseeable to him. If you look at the beginning of  
19 that testimony by Mr. Hinton, the first things he says is when a  
20 cocaine load would come in, and he was asked who would be there  
21 when the cocaine loads came in and he said both Lloyd and  
22 Sampson, that one could come and the other would follow.

23 THE COURT: Yes? And so is your argument that both of  
24 them should be attributed with this?

25 MS. EVERHART: Yes, Your Honor. It was certainly

1 reasonably foreseeable to them. They were at Barkleaf, and  
2 there was quite a bit of testimony, some of which I made  
3 reference to in my position paper, that they were always -- that  
4 Sampson and Sammy were always there at that house at Barkleaf;  
5 that Barkleaf was the sort of hub of all of this activity, and  
6 the testimony was that they were both involved not only in the  
7 distribution of marihuana, but also of cocaine going through  
8 that house.

9 THE COURT: You have included here -- let's see. You  
10 calculated how many weeks?

11 MS. EVERHART: 44 weeks, Your Honor. I took the, I  
12 think I took the beginning of August or something of 2008 and  
13 counted the weeks up through the date of Mr. Hinton's arrest,  
14 which was in May of 2010.

15 THE COURT: And came up with 44?

16 MS. EVERHART: I came up with 44 weeks, yes, Your  
17 Honor.

18 THE COURT: August of '08 to May of '10?

19 MS. EVERHART: Yes, sir. I may have started at the  
20 beginning of July. That was just what I was figuring, because  
21 most of this didn't really get started until about June or July  
22 of 2008.

23 THE COURT: That's -- am I calculating incorrectly?  
24 Let's see, if you take, even if you take August of '08 to August  
25 of '09, that's 52 weeks right there.

1 MS. EVERHART: Yes.

2 THE COURT: And then from August of '09 to May of  
3 2010, that's an additional number of weeks. You said... isn't  
4 that how you said you calculated it?

5 MS. EVERHART: No, I calculated --

6 THE COURT: Oh.

7 MS. EVERHART: Oh, May of -- yeah. Gee. Actually,  
8 this, I went into law so I wouldn't have to do math. This is an  
9 indication of why.

10 So actually, yes, you're quite right, Your Honor. I  
11 was cutting out a year. So I guess it should be 52 plus 44.

12 THE COURT: All right. Mr. Watson, let me hear from  
13 you on this issue.

14 MR. WATSON: First I'd just point out that if I, by my  
15 quick math, that this would be the equivalent of  
16 96,000 kilograms of marihuana, which by my other quick math  
17 would dwarf the, I believe, about 11,300 kilograms of marihuana  
18 that the court has attributed to Mr. Lloyd to this point. I  
19 would certainly suggest that the language here used by Mr.  
20 Hinton is not nearly precise enough to attribute a great amount  
21 of this great weight. And I know that the court needs to take  
22 the language as it is and wherever it leads is where the  
23 language leads. But this language used by Mr. Hinton was very  
24 general in nature both with regard to the quantity and the  
25 frequency. It seemed to be somewhat of a casual remark.

1 And also with regard to Mr. Lloyd's involvement or  
2 presence, it's kind of something that may have happened, not  
3 something that happened every time, and would certainly take the  
4 position that this language used by Mr. Hinton is not precise  
5 enough to attribute this weight to Mr. Lloyd.

6 Also, just because drugs passed through Barkleaf does  
7 not automatically mean that it's attributed to Mr. Lloyd. It's  
8 only the transactions or the amount of drugs that were  
9 reasonably foreseeable to him. And that doesn't mean every drug  
10 or every amount of drug that went through that house or any of  
11 the people in the house. And without more precise testimony as  
12 to what his role in this or these transactions were, he cannot  
13 be attributed with these amounts.

14 THE COURT: Okay. Well, let's look at the, try to  
15 look at the law on this issue.

16 The question on this issue, I think, is whether or not  
17 the conduct of the co-conspirators, bringing all this there to  
18 the Barkleaf address, was reasonably foreseeable to the  
19 defendant and should be deemed relevant conduct for purposes of  
20 the drug weight calculation. The guidelines define relevant  
21 conduct to include, under A, "All acts and omissions committed,  
22 aided, abetted, counseled, commanded, induced, procured or  
23 willfully caused by the defendant." And then B, "In the case of  
24 a jointly undertaken criminal activity (a criminal plan scheme,  
25 endeavor or enterprise undertaken by the defendant in concert



1 with others, whether or not charged as a conspiracy) all  
2 reasonably foreseeable acts and omissions of others in  
3 furtherance of the jointly undertaken criminal activity."

4           The government is arguing under Subsection B that  
5 these were reasonably foreseeable acts of others in furtherance  
6 of the jointly undertaken criminal activity. And the guideline  
7 goes on: "That occurred during the commission of the offense of  
8 conviction, in preparation for that offense, or in the course of  
9 attempting to avoid detection of responsibility for that  
10 offense."

11           "The scope" -- the Notes go on to point out that "The  
12 scope of the criminal activity jointly undertaken by the  
13 defendant; that is, the jointly undertaken criminal activity, is  
14 not necessarily the same as the scope of the entire conspiracy"  
15 under Subsection B, "and hence, relevant conduct is not  
16 necessarily the same for every participant."

17           "The conduct of others that was both in furtherance of  
18 and reasonably foreseeable in connection with the criminal  
19 activity jointly undertaken by the defendant is relevant conduct  
20 under this provision."

21           It goes on later, "The criminal activity that a  
22 defendant agrees to jointly undertake and the reasonably  
23 foreseeable conduct are not necessarily identical. Two  
24 defendants agree to commit a robbery, and during the course of  
25 that robbery, for example, the first defendant assaults and

1 injures a victim. The second defendant is accountable for the  
2 assault and injury of the victim even if the second defendant  
3 had not agreed to the assault and had cautioned the first  
4 defendant to be careful not to hurt anyone, because the  
5 assaultive conduct was in furtherance of the jointly undertaken  
6 criminal activity, the robbery, and was reasonably foreseeable  
7 in connection with that criminal activity given the nature of  
8 the offense."

9 "With respect to offenses involving contraband,  
10 including controlled substances, the defendant is accountable  
11 for all quantities of contraband with which he was directly  
12 involved, and, in the case of a jointly undertaken criminal  
13 activity, all reasonably foreseeable quantities of contraband  
14 that were within the scope of the criminal activity that he  
15 jointly undertook. The requirement of reasonable foreseeability  
16 applies only in respect to the conduct of others under  
17 Subsection (a)(1)(B)."

18 Then it provides various illustrations. They give in  
19 example 7 in the guidelines, "Defendant R recruits Defendant S  
20 to distribute 500 grams of cocaine. Defendant S knows that R is  
21 the prime figure in a conspiracy involved importing much larger  
22 quantities of cocaine. As long as S's agreement and conduct is  
23 to the distribution of the 500 grams, defendant S is accountable  
24 only for that 500-gram amount, rather than much larger quantity  
25 imported by Defendant R." But that's with respect to (a)(1)(A).

1 Mr. Watson, the evidence is pretty clear throughout  
2 this trial that Mr. Hinton was -- excuse me -- that Mr. Lloyd  
3 was involved in a macro way, I wouldn't say a micro way, in the  
4 overall distribution and conspiracy. And so the government's  
5 arguing for the reliability and the reasonable foreseeability.  
6 What's your response to that?

7 MR. WATSON: First, as to the reliability, I would  
8 point out that Mr. Hinton also, I think, right after this  
9 testimony, testified that he was selling somewhat unbelievable  
10 amount of drugs a week. I think he almost was up to about  
11 40 kilograms a week. And I would submit to the court that his  
12 demeanor certainly didn't suggest that he was a reliable witness  
13 in all of his testimony.

14 First I would -- as far as Mr. Lloyd's involvement  
15 with this particular series of transactions, Mr. Hinton of  
16 course only speaks to Mr. Lloyd in a very general sense of being  
17 in the, being around, not that Mr. Lloyd had direct involvement.  
18 And then going from there is whether or not of course it's  
19 reasonably foreseeable based on Mr. Lloyd's other contacts or  
20 other involvement in the conspiracy. Of course Mr. Lloyd during  
21 this entire time lived in Atlanta, not Norfolk or Chesapeake,  
22 unlike several other members; he was not going to Barkleaf on  
23 any type of a daily or regular basis. He would come into town  
24 from time to time, it was alleged, but certainly wasn't here, I  
25 don't even believe, on a weekly or even monthly basis. He would

1 just come every now and then.

2 So I would submit to the court that he should not be  
3 held accountable for everything that went through Barkleaf  
4 Drive. Just because these drug amounts were cut there or  
5 delivered there and then distributed from there certainly didn't  
6 automatically mean that he should take or be responsible for  
7 these drug amounts. So there just needs to be something more  
8 than him being in the area to attribute this large drug amount.

9 THE COURT: Okay. Thank you.

10 You know, Ms. Everhart, I, I don't -- I'm not  
11 comfortable saying that we've reached a preponderance of the  
12 evidence on this. With the reference to the two of them, the  
13 fact that Mr. Lloyd was in and out of town... I know there's a  
14 lot of money that you've talked about that was found at various  
15 places, but the clarity at Page 71 is lacking for me on a  
16 preponderance. And so I'm going to overrule your objection on  
17 this issue.

18 Then you have 12 kilograms of cocaine that you want to  
19 have included. And is this involving a conversion of cash found  
20 during the traffic stop of the red F-150 with Massachusetts  
21 plates?

22 MS. EVERHART: Yes, Your Honor.

23 THE COURT: Okay. Tell me about that.

24 MS. EVERHART: This was, there was quite a bit of  
25 testimony on this issue. This involved the traffic stop of

1 Patricia Lanza, and she was driving the red Ford F-150 with  
2 Massachusetts plates that had been also used in the delivery of  
3 seven kilos of cocaine to Wheeler and Black by Daugherty at the  
4 Food Lion center on October 29th, 2008 that we discussed  
5 earlier. And the 264,000, I converted it -- of course we all  
6 know about my math skills -- but that would convert to a minimum  
7 of 12 kilograms of cocaine.

8 THE COURT: Okay. This was the Lexington police  
9 officer from North Carolina that came and testified?

10 MS. EVERHART: Yes, sir.

11 THE COURT: Okay. And with respect to Mr. Lloyd, the  
12 connection there? We have reviewed the standards in some detail  
13 just now. Do you want to make your argument on that?

14 MS. EVERHART: Yes, Your Honor. It's our position  
15 that Mr. Lloyd was in a position in this conspiracy that he  
16 would know or should have known everything that was going on  
17 with these people. And again, you cannot overlook the  
18 connection to Barkleaf, because it was Mr. Lloyd who originally  
19 engaged Mr. Black to assist him in finding a house. The  
20 testimony of Johnny Cowan was that he took Mr. Lloyd around  
21 looking at places and was trying to get Mr. Lloyd to rent one of  
22 his rental houses that he had, but Mr. Lloyd was not interested  
23 in that, and eventually Mr. Lloyd and Mr. Black prevailed upon  
24 the person who had, who was the lease holder at Barkleaf to let  
25 them use that location.

1           It was the testimony was of almost every witness in  
2 this case, not just Mr. Hinton, but also Mr. Black and also  
3 Mr. Todd, who lived at that Barkleaf house for a period of time,  
4 that every time a load came in, he had to move out because he  
5 wasn't supposed to be there, and Mr. Lloyd and Sampson and the  
6 rest of these people would come in. They did not live at the  
7 house, there was no reason for them to be at the house except  
8 when there were drugs in town, and the testimony was that when  
9 there were drugs in town, Sampson and Sammy were in town.

10           And there was also testimony from Clive Black and also  
11 from others that he collected the drug proceeds from the various  
12 people who were doing the street sales and would deliver them to  
13 Wheeler or Lloyd or Napier, because they were, they were there  
14 at the time any shipment of drugs came in to collect the money,  
15 after which they would leave and Mr. Lloyd might repair back to  
16 Atlanta until the next shipment was coming in.

17           THE COURT: There's no specific reference, though, in  
18 a transcript, to Mr. Lloyd and this money? I'm asking.

19           MS. EVERHART: No, Your Honor.

20           THE COURT: I'm going to treat this the same as I did  
21 this last objection. I just don't think that lack of  
22 specificity in that context with various conspirators rises to  
23 the preponderance level. So I'm going to overrule that  
24 objection.

25           Then we come to seven kilos of the bad cocaine that

1 was brought to Barkleaf by Mr. Wheeler.

2 MS. EVERHART: Yes.

3 THE COURT: Okay. And you've cited Pages 333 to 336  
4 of the transcript in support of that argument.

5 MS. EVERHART: And also Pages 302 through 304.

6 THE COURT: All right. Go ahead.

7 MS. EVERHART: Your Honor, this was a much-discussed  
8 incident between these people, including between Lloyd and  
9 Black. There was a recording that was introduced from May 21st,  
10 2009 involving the discussion of this because it was such a low  
11 quality weed. In fact, Mr. Watson tried to bring out at trial  
12 or tried to convince people at trial that this, in fact, wasn't  
13 really cocaine, that it was some kind of fake cocaine or  
14 something like that, but finally it had to be flushed down the  
15 toilet, it was disposed of in that way. But if you look at this  
16 transcript you can clearly see that not only was, was Mister --  
17 was it reasonably foreseeable to Mr. Lloyd, but since he was  
18 discussing the incident with Black, he did know about this  
19 shipment.

20 THE COURT: Weren't they -- don't I recall that they  
21 were actually selling it at a discount?

22 MS. EVERHART: They were trying to, Your Honor. And  
23 they couldn't get anybody that was all that interested in buying  
24 it. So in the end, Black flushed it.

25 THE COURT: Okay. Anything else on that one?

1 MS. EVERHART: No, sir.

2 THE COURT: All right. Mr. Watson?

3 MR. WATSON: Judge, if I could just have a minute?  
4 I'm reviewing the transcript.

5 THE COURT: Okay.

6 (Pause in the record.)

7 MR. WATSON: In reviewing the transcript, I don't see  
8 anything specific to Mr. Lloyd. So I would submit to the court  
9 this is no different from the previous two drug amounts. While  
10 there may have been specific testimony of the seven kilograms of  
11 cocaine, there's nothing specific to Mr. Lloyd about it. If Ms.  
12 Everhart can point me to a specific reference I certainly would  
13 address it.

14 THE COURT: All right.

15 MS. EVERHART: This is starting at Page 302, he's  
16 talking about bringing in the -- this is Black testifying,  
17 bringing in seven kilos of cocaine, and goes on to talk about  
18 meeting Wheeler off of 395 and giving the cocaine to Wheeler to  
19 bring to Barkleaf, which is where he ended up. And then on  
20 Page 304 down at Line 17 it says "It was no good," making  
21 reference to the cocaine, "and so Daugherty took it back and the  
22 rest of it washed down the sink. It wasn't actually cocaine.

23 "Okay. Just not good quality?

24 "Answer: Right. It was not good quality cocaine or  
25 what people want."



1 And then starting at Page 333, this is when we were  
2 playing some of the tapes. And this was conversation between  
3 Black and Mr. Lloyd, and at Line 12 on Page 334 it says "Okay.  
4 Mr. Black, what are the two of you discussing in that call?"  
5 Which is referring to him and Mr. Lloyd.

6 "Answer: We was talking about the previous  
7 conversation when Rabbi wanted to hire a girl to move the  
8 marihuana.

9 "Question: And at one point Mr. Lloyd says, 'yo they  
10 want to do it, but here's what it is, yo, I'm talking to him,  
11 but I can't even talk to him too tough because I'm amongst one  
12 of his soldiers."

13 Oh, here we go. On Page 336 he's talking about the  
14 Barkleaf house, and then the question: "And what were these,  
15 'he basically ate everything, my little two things out of it'?"

16 "Answer: I was telling him that we clean it out,  
17 clean out everything that was in it, referring to Barkleaf, and  
18 the two pie-pies was in regard to the blank. So that was the  
19 fake, the not-so-good cocaine that was left in the house. I was  
20 telling him I cleaned it all out of the house.

21 "Question: Is this the same cocaine you ended up  
22 flushing down the toilet?

23 "Answer: Yes, ma'am.

24 "Question. Lloyd says at one point he wants, he wants  
25 me to do his dirty work." And I guess that's the end of the

1 reference to that. But they are clearly discussing that  
2 seven kilos of cocaine that was very low quality.

3 THE COURT: And which exhibit? Is this 8, Government  
4 Exhibit 8A?

5 MS. EVERHART: Let's see.

6 THE COURT: Madam Clerk, do you have 8A?

7 COURTROOM DEPUTY: Yes, sir.

8 THE COURT: Is it here?

9 COURTROOM DEPUTY: Yes, sir.

10 MS. EVERHART: Yes. Exhibit 8A which would be the  
11 tape, and probably 8B is the transcript.

12 THE COURT: Do you have it there?

13 MS. EVERHART: Yes, Your Honor.

14 MR. WATSON: Yes, sir.

15 THE COURT: Okay. While you all are looking at that  
16 let me make a proposal to you. It's ten after 1:00 right now.  
17 I have a 2:30, and we still have a fair amount to go through.  
18 Perhaps we should get together, take our break, let you all  
19 talk, have a chance to look at your transcript references,  
20 things of that nature, and then come back at 3:00 and finish up.

21 MS. EVERHART: Your Honor, I have someplace I have to  
22 be at three o'clock.

23 THE COURT: Well, can you change it?

24 MS. EVERHART: I can try.

25 THE COURT: What do you -- it'll take us to 2:30 to

1 finish the objections, the remaining objections, go through the  
2 transcript and then for me to conduct the sentencing.

3 MS. EVERHART: I will try to reschedule, Your Honor.  
4 When I saw that you had a 2:30 sentencing I thought probably  
5 we'd be finished by 2:30. So...

6 THE COURT: I did too. But I think we've been working  
7 through them expeditiously, but there's a lot. And we have a  
8 trial transcript. And that's, it's an unusual sentencing --

9 MS. EVERHART: Yes, sir.

10 THE COURT: -- because of that. So --

11 MR. WATSON: Judge, I have one issue I'd like to raise  
12 to the court before we take a break?

13 THE COURT: Uh-huh.

14 MR. WATSON: And that is, in all these objections, one  
15 of them apparently I believe got lost in the shuffle when you  
16 were identifying the remaining objections after the drug weights  
17 that we had to address. I did object to the manager  
18 enhancement.

19 THE COURT: Okay. So why don't we take that up when  
20 we come back. And let's finish this one if you all are able to  
21 you now, we'll take our break and then come back and start with  
22 the manager enhancement. And make sure that you remind me that  
23 we need to take that up again. So we're going to finish on  
24 this. You all are going to keep looking at this transcript?  
25 Okay. Go ahead.

1           And Ms. Everhart, do we need your agent? Does he have  
2 to stay for all this? There's got to be something more  
3 productive --

4           MS. EVERHART: I think I'm going to excuse him for the  
5 later session, Your Honor. I thought that his testimony might  
6 be needed, but...

7           THE COURT: Can he go right now, or do you want to  
8 talk to him?

9           MS. EVERHART: No, I think he can.

10          THE COURT: All right. You are free to leave.

11          MS. EVERHART: Your Honor, if we're going to have to  
12 come back anyway, it might, I'm not even positive that this is  
13 the correct transcript I'm looking at, but by three o'clock I  
14 ought to have it.

15          THE COURT: Very good. We'll be back at  
16 three o'clock.

17          (Recess taken from 1:13 p.m. to 3:55 p.m.)

18          THE COURT: All right, Ms. Everhart.

19          MS. EVERHART: Yes, sir.

20          THE COURT: We were still talking about the 4,000?

21          MS. EVERHART: I think it's seven kilograms.

22          THE COURT: Seven. I'm sorry. Thank you.

23          MS. EVERHART: I'd prefer it was 4,000 but --

24          Anyway, I found what was looking for. It was  
25 Government Exhibit 8B, is the transcript on Page 5. And the

1 transcript starting at Page 333 where I was asking him to  
2 translate.

3 THE COURT: At Page 2 -- or what of 13?

4 MS. EVERHART: Page 5, Your Honor.

5 THE COURT: Page 5. Okay. Got it.

6 MS. EVERHART: And if you look at, it goes Lloyd,  
7 Black, Lloyd, Black, and then that second part where Black  
8 speaks, he says, "Yo, but I've been telling you that, man,  
9 because, yo, I'm about to tell the youth here now that he should  
10 [stutters], come and do what he needs to do, you know, because  
11 he basically ate everything, my two things, my little two things  
12 out of it. The little pie-pies that I have in here, I took them  
13 out, you know, so I told the man, yo, the people aren't  
14 responding, you know. So you know."

15 And I asked him to translate, and that's beginning at  
16 the bottom of Page 335.

17 THE COURT: All right.

18 MS. EVERHART: Line 23. And the question is: "Then  
19 you say I'm about to tell the youth here that he should come and  
20 do what he needs to do, you know, because he basically ate my  
21 two little things out of it, the little pie-pie I have in here.

22 "What are you talking about?

23 "Answer: I was talking about the Barkleaf house. I  
24 didn't get no money to pay the rent, to give to Shawn Brown to  
25 pay the rent. So I was telling him that I was going to tell

1 Shawn Brown you can take the house back.

2 "Question: And what were these, 'he basically ate  
3 everything, my little two things out of it?

4 "Answer: I was telling him that we cleaned it out,  
5 cleaned out everything that was in it, and the two pie-pies was  
6 regards to the blank. So that was the fake, the not-so-good  
7 cocaine that was left in the house. I was telling him that I  
8 cleaned it all out of the house.

9 "Question: Is this the same cocaine you ended up  
10 flushing down the toilet?

11 "Answer: Yes, ma'am."

12 THE COURT: Okay. So Mr. Watson, your response to  
13 that?

14 MR. WATSON: The fact that Clive back told Mr. Lloyd  
15 what had happened -- and I think he was telling him what had  
16 happened as opposed to what will happen -- to that cocaine, in  
17 and of itself doesn't really mean much of anything with regard  
18 to Mr. Lloyd's involvement with it. I would submit that the  
19 telephone call and Mr. Black's explanation of the telephone call  
20 simply provides the court with the fact that Mr. Black told  
21 Mr. Lloyd what he had done, without any particulars of  
22 Mr. Lloyd's involvement with this cocaine.

23 THE COURT: Why would he have told it to him  
24 otherwise? I mean, we're dealing with context here. And Mr.  
25 Watson, I'm not unsympathetic to the battle that you're waging;

1 that you have sort of an uphill battle on some of these issues  
2 because of the context, but we can't completely take it out of  
3 the whole trial context.

4 MR. WATSON: Yes, sir, I understand. I would just  
5 point out then that it's obviously the government's burden by a  
6 preponderance of the evidence, but their burden nonetheless, of,  
7 you know, Mr. Black could certainly have testified more  
8 precisely as to the origin of the cocaine or Mr. Lloyd's  
9 involvement with it, certainly could have come here today and  
10 testified. But simply relying on the fact that Mr. Black just  
11 told Mr. Lloyd that it had been disposed, even with the  
12 context -- and I certainly understand the court's point that  
13 it's not like this conversation can be taken and just examined  
14 without looking at everything else that has been testified to in  
15 this case -- but would still take the position that just telling  
16 Mr. Lloyd that it had been disposed of or flushed down the drain  
17 isn't enough to attribute these seven kilograms to him.

18 THE COURT: I don't know. I think -- again, it's a  
19 preponderance of the evidence standard. I think the government  
20 has met that burden on this based upon the -- I just don't, I  
21 don't see him, why he's giving him this information other than  
22 because of Lloyd's involvement with it. So I'm going to sustain  
23 that objection and the seven kilos will be included.

24 Now we come to 9 to 10 kilos of cocaine and thousands  
25 of pounds of marihuana based on Todd's testimony of what he saw

1 at Barkleaf in 2008. Mr. Todd had been testifying that he lived  
2 at Barkleaf for about a month, and then states that he never saw  
3 Sammy at the house during this time; he did meet him on one  
4 occasion outside of Barkleaf and a marihuana deal was discussed.

5 And then at Page 553 of the transcript it talks about  
6 thousands of pounds of marihuana on one occasion, 1,000 pounds,  
7 but then states 9 or 10 kilos without specifying which drug.  
8 And apparently the government is arguing that this is cocaine,  
9 and the witness did previously mention cocaine. So we're  
10 looking, I guess, at Page 553; is that right?

11 MS. EVERHART: I believe that's so, Your Honor. Those  
12 were the pages that I had cited.

13 THE COURT: Okay.

14 MS. EVERHART: And I would say that throughout this  
15 trial when reference was made to kilos, they were always talking  
16 about cocaine; when reference was made to pounds, they were  
17 always talking about marihuana, which is typical for this group.  
18 Because I had asked him, this is 553 at Line 9, "Now, what sort  
19 of quantities of drugs were being stored at Barkleaf during the  
20 times you were there?"

21 "Answer: Thousands of pounds of marihuana, like on  
22 the one occasion was 1,500 pounds of marihuana, and about nine  
23 or 10 kilos."

24 So we've only got two drugs. He's saying this much  
25 marihuana and this much cocaine.



1 THE COURT: But again, come back to this issue of  
2 tying it to this defendant that we've discussed before and the  
3 basis for me finding not a preponderance.

4 So then he goes on, "And this was at Barkleaf?

5 "Yes."

6 Where was it kept?

7 "In the attic of the house, the marihuana, and in the  
8 laundry room."

9 "[What] part was Sammy playing in this?

10 "From my knowledge, Sammy was a person that  
11 distributed the marihuana.

12 "And did you know him to make trips out of the  
13 Tidewater area?

14 "Well, I know on one occasion.

15 "Tell us about that."

16 So we have a tie to him on the marihuana there?

17 MS. EVERHART: What I would say, Your Honor, is that  
18 you have to, if you recall, Andre Todd was staying at Barkleaf  
19 and was in a position to see stuff, but when Mr. Lloyd came into  
20 town, he was supposed to leave because Black was letting him  
21 stay there and wasn't really supposed to be doing so --

22 THE COURT: Right.

23 MS. EVERHART: -- and therefore he would not have had  
24 that much contact with Lloyd. And it is the testimony of other  
25 witnesses that connects Lloyd to the cocaine so far as many

1 different events for which he has been attributed quantities of  
2 cocaine.

3 THE COURT: Well, on this particular batch I will  
4 allow the 1,500 pounds of marihuana, but I'm not going to allow  
5 the cocaine to be included. Or at least that's my inclination.  
6 But I haven't heard from Mr. Watson yet --

7 MS. EVERHART: Yes, sir.

8 THE COURT: -- so I'd better hear from him.

9 Mr. Watson?

10 MR. WATSON: We do have a different problem here than  
11 with the other drug quantities, and that is, there is no  
12 identification of a transaction or a date, such that I think  
13 there's considerable danger here that we may have some double  
14 counting between this amount of marihuana and some other amount  
15 that's been attributed to Mr. Lloyd. I mean, we have some other  
16 large shipments that certainly have been attributed to him, and  
17 this testimony on Page 553 certainly doesn't pinpoint any  
18 particular date or shipment or different shipment than some  
19 other of the amounts that have been attributed to Mr. Lloyd.

20 THE COURT: So you're concerned about double counting?

21 MR. WATSON: Yes, sir. That's my first concern. But  
22 I just don't think we have any context here to determine what  
23 1,500 pounds or what weight at all that, you know, where it came  
24 from, when it came there, and was it part of any other of the  
25 marihuana that's been attributed to Mr. Lloyd already.

1 THE COURT: When was he living at the house?

2 MS. EVERHART: Your Honor, that started off in  
3 November of 2008.

4 THE COURT: So do we know, do we have testimony on the  
5 end date?

6 MS. EVERHART: I don't know that we have testimony on  
7 the end date, Your Honor. We do know that he was not living  
8 there before November of 2008, and that 1,700-pound shipment had  
9 been disposed of by then, because that was in July of 2008, and  
10 they had -- well, first of all, Virginia Beach Police Department  
11 got quite a bit of it, and according to the testimony of the  
12 witnesses, it was not a very good quality marihuana and they  
13 were shipping it out.

14 THE COURT: Mr. Watson, let Ms. Everhart step up to  
15 the podium and discuss this double counting issue a little  
16 further.

17 It's your burden by a preponderance to show there is  
18 no double counting issue, and we don't have a lot here. Maybe  
19 you think it's enough. So if you do, you tell me.

20 MS. EVERHART: Oh, I do, Your Honor, or I wouldn't  
21 have put it in there. And in fact I think it was brought out on  
22 Mr. Dunn's cross that he was not there in the summer of 2008  
23 because he was in jail. And that, so this was -- that's where  
24 the November 2008 date comes from. And I do not have specifics  
25 in the testimony, I'm just recalling the general testimony that

1 what we know is that the marihuana was brought, in the  
2 1,700 pounds, in July of 2008. The Virginia Beach Police  
3 Department got their hands on a couple of hundred pounds of it  
4 and the rest of it was, had been distributed by various people.  
5 And a lot of it, according to the witnesses, was shipped out  
6 because they were having problems unloading it here because of  
7 the poor quality of the cocaine -- of the marihuana, rather.

8 THE COURT: Do we have any other a contribution of  
9 marihuana to Mr. Lloyd?

10 PROBATION OFFICER SULLIVAN: No, Your Honor. And  
11 Mr. Lloyd is not mentioned again until February 24th of 2009,  
12 and that's dealing with a cocaine shipment.

13 THE COURT: Okay. You know, the other was -- the  
14 1,700 pounds was in July of 2008. And this was?

15 MS. EVERHART: After November Your Honor.

16 THE COURT: November. And I'm sorry, but refresh me  
17 on how we know it was after November.

18 MS. EVERHART: Apparently Mr. Todd was in jail until  
19 late September and didn't hook up with Black until November.

20 THE COURT: To have a place to live?

21 MS. EVERHART: Exactly. Because his wife kicked him  
22 out of the house.

23 THE COURT: But we don't know how much of the 1,700  
24 pounds was taken by the police right off the top, do we?

25 MS. EVERHART: Well, they took -- out of the storage

1 shed in Virginia Beach they took 200 kilos. Then at the other  
2 side --

3 THE COURT: Two hundred --

4 MS. EVERHART: Excuse me, 200 pounds, which is a  
5 little under 100 kilos.

6 THE COURT: Of marihuana.

7 MS. EVERHART: And of the rest of it, some of it was  
8 still in the other storage facility over in Norfolk, and that  
9 was removed, but it did not go to Barkleaf, that marihuana went  
10 to one of the other co-conspirators' house. I don't think it  
11 was Mr. Todd. I think it was Mr. Lewis Scott. They brought it  
12 over there. And the rest of it, according to the, because it  
13 was of such poor quality -- I'm trying to recall which witness  
14 said they were packing it up in tow trucks, like these trucks  
15 that actually move vehicles up on top of them, packing those  
16 vehicles and sending it out of the area.

17 And then there were a couple of people who were --  
18 well, at least one, Angela Thomas, who was arrested with  
19 30 pounds of marihuana that perhaps came out of that shipment, I  
20 don't know. But the rest of it had been -- what couldn't be  
21 disposed of locally was sent to their other distribution  
22 locations.

23 THE COURT: You know, July, November, is it likely  
24 that the rest of the 1,700 was all gone?

25 MS. EVERHART: I would say yes.

1 THE COURT: Yes? Yes, I agree it's likely. But you  
2 know, have you met the burden of proof by a preponderance on  
3 this issue? It's close. I think, because it is close, I'm not  
4 going to include it. So the objection is overruled and it will  
5 not be included.

6 Then we have the hundred pounds of marihuana based on  
7 cash found in Mr. Lloyd's suitcase in Phoenix, right?

8 MS. EVERHART: Yes, sir.

9 THE COURT: And that is an issue of whether or not  
10 there's enough evidence to convert that money to marihuana. And  
11 we have Page 345 and 346 references to what Mr. Lloyd told  
12 Mr. Black.

13 This is Mr. Black testifying. Question at 345, Line  
14 24, "Now sometime right in this time frame, about the beginning  
15 of June, middle of June, 2009, did Mr. Lloyd tell you about  
16 losing some money?

17 "Answer: Yes, ma'am.

18 "Question: What did he tell you?

19 "Answer: He told me that they took \$100,000 from him,  
20 I think in Arizona, from off the plane or something.

21 "Question: Did he tell you whose money it was?

22 "Answer: The big buy from Baltimore.

23 "Question: Did he tell you why he was in Arizona?

24 "Answer: No, ma'am."

25 Okay. Is there anything else on that?

1 MS. EVERHART: Well, I think we can judge this from  
2 the context, Your Honor, because it was during the same period  
3 of time that he was trying to negotiate with first an informant  
4 and then later the ICE agent, and that would have been  
5 Mr. Heyward, and talking about bringing large amounts of  
6 marihuana in. And this is all sort of one thing follows  
7 another. And then he's flying into Arizona, which is the source  
8 state for marihuana, with \$100,000, which is why I think it  
9 should be looked at in marihuana terms as opposed to cocaine  
10 terms. Because what Mr. Lloyd was very heavily involved with  
11 during that same time frame was trying to arrange the transport  
12 of large sums of -- large quantities, rather, of marihuana.

13 THE COURT: He was encountered as he was arriving?

14 MS. EVERHART: Yes.

15 THE COURT: Mr. Watson?

16 MR. WATSON: My recollection was that Mr. Lloyd was  
17 encountered in the airport at the baggage claim area and was  
18 intercepted somewhere close to the baggage claim area.

19 Certainly would agree that --

20 THE COURT: That's not inconsistent with what Ms.  
21 Everhart said, is it, about him arriving?

22 MR. WATSON: No, sir, it is not.

23 THE COURT: Okay.

24 MR. WATSON: Would have to admit there are not too  
25 many good explanations for having a large amount of cash in your

1 duffel bag.

2 THE COURT: And it was in a secret -- was it in a  
3 secret compartment, as I recall?

4 MS. EVERHART: It was sewn into the lining of the  
5 suitcase.

6 THE COURT: I call that a secret compartment.

7 MS. EVERHART: Yes, sir.

8 MR. WATSON: Not many great explanations for why he  
9 had the cash in the airport in that manner, but on the other  
10 hand, it is the government's burden to prove that this was part  
11 of a drug deal. And we don't have anything more or less than  
12 him getting stopped in the airport and -- well, certainly have  
13 to mention that he mentioned it to Clive Black also. But that's  
14 pretty much the beginning and the end of it. He gets the cash  
15 taken out of the duffel bag and he mentioned it to Clive Black.  
16 But there's really no indication whatsoever that he was going to  
17 purchase marihuana or that he had, or this was the proceeds from  
18 a marihuana purchase.

19 Now, because there aren't many other good explanations  
20 for why he had that money or what legally he was doing with that  
21 money, I mean, certainly hard to imagine other things that  
22 didn't involve drugs he could have been doing with the money.

23 THE COURT: He arrived at the airport in Arizona with  
24 money that belonged to the big guy from Baltimore, it was sewn  
25 into the suitcase, and they were trying to arrange, there were



1 discussions of them trying to arrange a deal through Arizona.  
2 We have all that before us, I think. And your suggestion is  
3 that it doesn't tie it enough? Tie it together enough?

4 MR. WATSON: I would have to agree with all of that  
5 except for I'm not certain there were any discussions about a  
6 drug deal being arranged in Arizona.

7 THE COURT: Well, okay. I don't want to get my  
8 evidence mixed up, so I better hear from Ms. Everhart.

9 MS. EVERHART: The ice agent was in Arizona.

10 THE COURT: Right. He was the one that was having the  
11 telephone conversations about being the transporter, wasn't he,  
12 Mr. Watson?

13 MR. WATSON: I --

14 THE COURT: That was my recollection from the trial.

15 MR. WATSON: It -- that is my recollection, that the  
16 ice agent was in Arizona. I'm not sure that discussions were  
17 about a drug transaction in Arizona, but I --

18 THE COURT: Okay.

19 MR. WATSON: Not to put too fine a point on it, but I  
20 don't recall one way or the other. I don't specifically recall  
21 there being any discussions about transporting drugs from  
22 Arizona. That's all I can say.

23 THE COURT: Ms. Everhart, refresh me on the Arizona  
24 connection.

25 MS. EVERHART: Your Honor, Mr. Heyward, after he had

1 been negotiating with the defendant, then gave the defendant the  
2 means to contact the ICE agent out in Arizona, who of course was  
3 acting undercover, and at that point they began discussing a  
4 4,000-pound deal there. And the ICE agent was in Arizona, and  
5 that was known to the defendant.

6 THE COURT: So we don't have any further testimony  
7 from ICE about the -- and you're not suggesting this money was  
8 in furtherance of that particular deal?

9 MS. EVERHART: Well, that actually occurred  
10 beforehand. But I think it was the general scheme of these  
11 people. And there was mention in one of the transcripts of AZ,  
12 which is Arizona.

13 THE COURT: So your theory is that somebody else in  
14 Arizona was going to be providing, not the ICE agent?

15 MS. EVERHART: Oh, yes. This person named D. And it  
16 looks to me like Mr. Lloyd was being sort of the middle-man in  
17 this deal that he was trying to negotiate with the agent in  
18 Arizona, and it was probably the same sort of deal that he  
19 expected to get a little kickback out of the transportation fee.

20 In any event --

21 THE COURT: Where is the reference to D in Arizona?

22 MS. EVERHART: There are some conversations that the  
23 ICE agent had with D that were actually played at trial as well.

24 THE COURT: Do you want to point me to something more?

25 MS. EVERHART: Okay. But Your Honor, I do think that

1 the bottom line is there's no explanation for that. What  
2 Mr. Lloyd was doing during that period of time was trying  
3 desperately to arrange transport of marihuana, and he comes to a  
4 source state. He had not yet at that point been introduced to  
5 the agent in Arizona. That happened later.

6 THE COURT: Well, you know, Ms. Everhart, even if  
7 there was a reference to D, it's -- it's not going to -- I don't  
8 think it's going to take me to a preponderance position on this  
9 issue, so I'm going to overrule the objection on that.

10 MS. EVERHART: Yes, sir.

11 THE COURT: Okay. Now you have -- don't go anywhere,  
12 because we've got -- I think this is your last one -- well, no,  
13 we've dealt with that. We've dealt with the 20 versus the 30.

14 Did you have anything else?

15 MS. EVERHART: No, Your Honor.

16 THE COURT: Okay. So now we have the role enhancement  
17 issue that -- and then the gun. Those are the two remain  
18 issues, right?

19 MS. EVERHART: Yes, sir.

20 THE COURT: Okay. Mr. Watson?

21 MR. WATSON: Would you like me to address the manager  
22 first?

23 THE COURT: Role enhancement. Hmm-hmm.

24 MR. WATSON: Yes, sir. Dealt with Section 3B1.1(b),  
25 which is the three-level enhancement and the defendant was

1 manager or supervisor and the criminal activity involved five or  
2 more participants. I would have to agree on the second part of  
3 the test, five or more participants, obviously. So the only  
4 issue is whether Mr. Lloyd was a manager or supervisor. The  
5 test is whether he basically controlled the activities of  
6 others. And --

7 THE COURT: Leadership over only one participant is  
8 enough, according to the case law, right?

9 MR. WATSON: I would agree that controlling the  
10 activities of just one person is enough under the case law.

11 THE COURT: Okay.

12 MR. WATSON: And would submit that in this case,  
13 Mr. Lloyd, the evidence was, assisted in the acquisition of  
14 marihuana, was basically a middle-man. I guess would have to  
15 admit the evidence had a couple different roles for him, but  
16 primarily his role was as a middle-man for Clive Black and  
17 others for acquisition of marihuana from the southwest to the  
18 mid-Atlantic, the basics of the testimony against Mr. Lloyd.  
19 And I would characterize him as somebody who was paid, allegedly  
20 was paid for setting up these transactions. I would submit to  
21 the court that Clive Black was clearly at least a leader, was  
22 probably the leader of this local organization that Mr. Lloyd,  
23 certainly it was testified to, participated in.

24 THE COURT: Paragraph 46 bases it on direction of  
25 activities of CW-15, right? That's what the probation officer

1 relied upon for giving the enhancement.

2 MR. WATSON: Yes, sir. I have Paragraph 46 in front  
3 of me now.

4 THE COURT: Okay.

5 MR. WATSON: And I would agree with that, that my  
6 understanding from Paragraph 46 is that this was -- I'm not  
7 completely certain -- but Trenton Hawkins, who was driving at  
8 least on one occasion the marihuana between -- well, I believe  
9 the 1,700 pound shipment. But I just want to be sure before I  
10 proceed.

11 THE COURT: Maybe we should hear from the government  
12 on this issue.

13 MS. EVERHART: Your Honor, CW No. 15 is Mr. Heyward.  
14 But there was certainly plenty of evidence -- was it?

15 PROBATION OFFICER SULLIVAN: No, Your Honor.

16 MS. EVERHART: Okay. Who is it?

17 PROBATION OFFICER SULLIVAN: All we have is a  
18 cooperating defendant. We didn't have any more information  
19 about it. It was a CI that was working with ICE.

20 MS. EVERHART: Well, I guess if Probation can't answer  
21 it, then I don't know who CW-15 is. But certainly I can tell  
22 the court that Mr. Lloyd directed the activities of more than  
23 one individual. He directed the activities of Black. Black  
24 clearly worked for him. He recruited Hawkins. He attempted to  
25 recruit Heyward. He tried to recruit an ICE undercover. He

1 certainly was the architect of that 1,700 pound deal, from the  
2 testimony of all of the witnesses. When the load came back to  
3 this area, he told Black to round up some people to unload all  
4 the stuff, which he did.

5 THE COURT: Okay. Give me some, give me some  
6 references. Try to pick your best ones. It only takes one,  
7 according to the case law and the guidelines.

8 MS. EVERHART: Take the matter with Mr. Hawkins, and I  
9 don't know that I can direct you to any particular page number,  
10 but Lloyd asked Black to find him a driver to bring this stuff  
11 up, and he found Hawkins. And thereafter, Lloyd talked to  
12 Hawkins and hired Hawkins to get a driver because Hawkins had  
13 lost his license, I think, at that time, to drive the marihuana  
14 from Texas back here. And he, Lloyd, followed in another  
15 vehicle, the truck going down to Texas and coming back. And  
16 then he, according to any number of witnesses, was in charge of  
17 the unloading of that vehicle. He certainly controlled Black.  
18 Black arranged for the house at Barkleaf at the request of  
19 Lloyd. Black rented the storage sheds at the request of Lloyd  
20 to store the marihuana. Lloyd was collecting money which he was  
21 then turning over to Mr. Lloyd or Mr. Wheeler, who happened to  
22 be at the house at the time, from the proceeds of the sales.  
23 And Lloyd was also basically in charge of arranging many if not  
24 most of these drug deals.

25 THE COURT: What do you say to Mr. Watson's argument

1 that these were merely co-conspirators working together?

2 MS. EVERHART: One of the elements that one looks at  
3 in deciding whether or not somebody is in a supervisor position  
4 is whether or not they recruited other people. Black was doing  
5 what Lloyd told him to do, not the other way around. He may  
6 have -- well, he was operating at a lower level doing  
7 distribution on his own, clearly, but it was Mr. Lloyd who was  
8 recruiting all these drivers, or attempting to recruit drivers  
9 to bring these loads in from Texas, which indicates to me that  
10 he was exercising a supervisor or managerial role.

11 THE COURT: When we get to the point where Mr. Lloyd  
12 is here with the, I forget what they were called at the trial of  
13 these other guys, the gun incident, where the gun is given to  
14 the agents, in that incident Mr. Black -- was Mr. Black driving  
15 Mr. Lloyd around --

16 MS. EVERHART: Yes.

17 THE COURT: -- when those gentlemen came here?

18 And they switched off vehicles at some point, didn't  
19 they?

20 MS. EVERHART: They did. And Lloyd was at that point  
21 being recruited by -- Mr. Lloyd and his friend Black was being  
22 recruited to drive them around and try to find this person who  
23 owed them money, and there were, of course, frantic  
24 communications between Lloyd and the ICE agents because they  
25 were concerned that somebody was going to get hurt with Lloyd

1 and his buddies running around with guns trying to collect a  
2 drug debt.

3 THE COURT: So you wish to -- all right. I have a  
4 role in the enhancement, role in the offense enhancement based  
5 upon CW-15. We don't know enough, I take it, at this point for  
6 you to sort of defend that assertion with respect to CW-15. And  
7 so your assertion is the enhancement does apply but for  
8 different reasons?

9 MS. EVERHART: Yes, sir. There was nothing that I  
10 would object to because I thought he deserved at least a three  
11 if not a four-point role enhancement.

12 THE COURT: This is a 3?

13 MS. EVERHART: This is a 3. And the basis for it from  
14 Probation's point of view, I having been more familiar with the  
15 case and sat through the trial testimony, there was all sorts of  
16 evidence of his managerial and supervisory position in this  
17 matter.

18 THE COURT: So in essence you want me to sustain the  
19 objection with respect to CW-15, but not with respect to the  
20 other --

21 MS. EVERHART: No, Your Honor. I believe CW-15 was  
22 Heyward, and he was certainly attempting to recruit Mr. Heyward.  
23 But I'd have to go back and take a look at who CW-15 is from the  
24 context of the presentence report.

25 THE COURT: I guess what I'm getting at, Ms. Everhart,



1 is the defendant walked in here thinking he was defending, he  
2 was looking at that as the basis for the enhancement.

3 MS. EVERHART: Well, I will say that in his final  
4 position paper he didn't even mention role, or I might have had  
5 more of that in my position paper. He had initially talked  
6 about role. I think it was an oversight on Mr. Watson's part.  
7 But be that as it may. I had abandoned, I think, at least one  
8 or two of his other objections and I didn't know if he was going  
9 forward with that.

10 THE COURT: I think for me -- let me say this: For  
11 me, my sense, I certainly had a very, a real sense that, at the  
12 end of that trial, that Mr. Black was doing the bidding of  
13 Mr. Lloyd. And perhaps others, but also of Mr. Lloyd. That's,  
14 to me, the real question here about the role in the enhancement,  
15 notwithstanding that it's CW-15 on which it's based here.

16 So Mr. Watson, I think maybe you need to try to  
17 address that for me. Because when we look at -- the three-level  
18 enhancement is appropriate if the defendant is a manager or  
19 supervisor, not an organizer or leader, and the criminal  
20 activity involved five or more participants. As you said, it  
21 did involve five or more. So we're dealing with whether he's a  
22 manager or supervisor. And he has to have been the manager or  
23 supervisor of at least one or more participants. And the  
24 government has sort of broadly asserted multiple people, but I'm  
25 going to focus on Black for the moment and leave out Hawkins and

1 Heyward, and look at how Black fits in.

2 In this Rashawn case, 328 F.3d 160, the Fourth Circuit  
3 said "In determining whether a sentencing enhancement is  
4 appropriate here, a district court should consider whether the  
5 defendant exercised decision-making authority for the venture."

6 Well, no question in my mind, based upon everything  
7 that I've seen, that Mr. Lloyd exercised a significant amount of  
8 decision-making authority trying to set up all these deals.

9 "Two, whether he recruited others to participate in  
10 the crime." And he came here and found Mr. Black and had gotten  
11 Mr. Black to find a house for him on Barkleaf Drive.

12 And then "Whether he took part in planning or  
13 organizing the offense." Clearly we've been talking about that  
14 all throughout the day of his efforts to coordinate these varies  
15 shipments.

16 And then "The degree of control and authority that he  
17 exercised over others." He's got to exercise authority over at  
18 least one other person. So we're looking at Mr. Black right  
19 now.

20 Hold on a second.

21 (Pause in the record.)

22 THE COURT: So Mr. Watson, that's where I am when I  
23 look at this. And I wanted to give you the opportunity to  
24 address that.

25 MR. WATSON: Yes, sir. I don't have that particular

1 case in front of me, but I do have case law which identified  
2 those four factors, as well as three others, being a claim to a  
3 large amount of the proceeds, and then two general factors,  
4 nature of participation and nature of the crime. But I would, I  
5 guess, first submit that I don't believe there's any evidence  
6 that Mr. Lloyd had any larger or smaller share of the proceeds.  
7 They -- than Mr. Black, for example. As far as Mr. Black's  
8 testimony as to whether he or Mr. Lloyd was either on top of  
9 this pyramid or at least higher up than the other one, I would  
10 submit that that would not be, that that would not be clear;  
11 that I could certainly understand someone taking from his  
12 testimony at certain points that he was not higher or at the  
13 top, but at other points that he was; that he was the one kind  
14 of commanding everyone here locally -- not to digress too far in  
15 Mr. Black's particular role in all of this -- but that Mr. Lloyd  
16 was more, as I said before, his middle-man to get the large  
17 quantities as opposed to someone locally who organized anyone or  
18 commanded anyone. That Mr. Black had that role. And while I  
19 can understand thinking that the person who is bringing in or at  
20 least facilitating the importation of large quantities of drugs  
21 may be over the person locally who was then taking them and in  
22 charge of distributing them out locally, I would submit to the  
23 court that Mr. Lloyd was just Mr. Black's middle-man. And I  
24 certainly understand that Mr. Black testified as to Barkleaf  
25 Drive and a few other things that Mr. Lloyd, that Mr. Lloyd

1 directed him to do or suggested that he do, but would suggest in  
2 totality that neither one of them was reporting to the other.

3 THE COURT: Okay. Thank you. I'm going to overrule  
4 the objection to the role enhancement. I also looked at this  
5 Cameron case from 2009, 573 F.3d 179 that tries to  
6 distinguish sales, or kind of analyze sales and the differences.  
7 And when I look at the way they do that, I see a lot of those  
8 elements here that were not present there that I just reviewed  
9 with respect to Mr. Lloyd's involvement with Mr. Black and with  
10 organizing the shipments and overseeing much of what was taking  
11 place here. Even if he only infrequently -- well, let me say it  
12 differently.

13 Even if he was not here at the Barkleaf Drive house  
14 constantly, I see enough presence and look at these various  
15 indicia, enough indicia to confirm his control and direction of  
16 activity over Mr. Black. And so I'm going to overrule that  
17 objection.

18 Then we get to the gun enhancement. I think that's  
19 where we are. So the jury acquitted Mr. Lloyd of Count 28,  
20 possession of a firearm in furtherance of drug trafficking. And  
21 the defendant, in the position statement, has highlighted the  
22 fact; that the only person to place a gun in Mr. Lloyd's hand,  
23 hands, was Mr. Black, at transcript Page 1031, and that in  
24 finding the defendant not guilty of the weapons charge, the jury  
25 rejected Mr. Black's testimony.

1 In Grubbs, this 2009 decision from the Fourth Circuit,  
2 they said, "A sentencing court may consider uncharged and  
3 acquitted conduct in determining a sentence, as long as that  
4 conduct is proven by a preponderance of the evidence" -- they  
5 cite Watts -- holding "A jury's verdict of acquittal does not  
6 prevent the sentencing court from considering conduct underlying  
7 the acquitted charge, so long as that conduct has been proven by  
8 a preponderance of the evidence," and Jones, holding "that a  
9 defendant need not be convicted of the charges constituting  
10 relevant conduct for him still to be held accountable for them  
11 when a sentencing court determines that the defendant's  
12 sentence, as long as the government establishes the existence of  
13 these other incidents by a preponderance of the evidence."

14 So the question is whether or not the government's  
15 demonstrated by a preponderance of the evidence that Mr. Lloyd  
16 possessed a firearm.

17 Let me maybe hear first from you, Ms. Everhart.

18 MS. EVERHART: Your Honor, there are two incidents  
19 upon which this could be based: The first being the arrival of  
20 Mr. Lloyd and this person named Black in the Norfolk area to  
21 attempt to find Mario Woods and get the money out of him that he  
22 owed Mr. Lloyd and his compatriot, and according to the  
23 testimony that we reviewed earlier, he had a gun during that  
24 incident.

25 There was extensive testimony about the second

1 incident beginning at about Page 1015 of the trial transcript.  
2 Once again it was Mr. Lloyd and this time has Baltimore guys.  
3 They were here looking for somebody, once again, that owed him a  
4 drug debt, and they were running around town with guns.  
5 According to the testimony of the local ICE agents, they were in  
6 constant contact with Lloyd that day who was giving them sort of  
7 a blow-by-blow of what was going on, and very eventually they  
8 were getting so concerned, the ICE agents made their presence  
9 known, at which point Lloyd panicked and gave the gun to Lloyd,  
10 who immediately called the Virginia Beach Police Department and  
11 ICE agents who came and retrieved the gun, and that was entered  
12 into evidence.

13 In addition to the testimony of Black in this regard,  
14 we also have all of the agents who did surveillance and saw  
15 Black in the company of Mr. Lloyd and these Baltimore guys as  
16 they drove around town. And there was also testimony from the  
17 agents that they spoke with the relative of the person who owed  
18 the drug debt to try to see if they could get any more  
19 information on that.

20 So we would submit in addition -- and importantly,  
21 that the elements to prove 924(c) beyond a reasonable doubt  
22 requires a lot more than the preponderance standard at this  
23 stage of the game. And also the elements of a, to prove a  
24 924(c) are very different. We're talking here about whether a  
25 gun was present during the offense as opposed to whether a gun

1 was possessed and used in furtherance of a drug conspiracy. The  
2 jurors did not find that Mr. Lloyd didn't have a, gun. They  
3 found that he did not have a gun, in their opinion, in  
4 furtherance of the drug conspiracy. And because --

5 THE COURT: Because it was the gun of the other guy  
6 that was there? That was what Black told -- excuse me, that was  
7 what Mr. Lloyd told Mr. Black, according to Mr. Black, that it  
8 wasn't Lloyd's gun, but it was the gun of the man that came with  
9 him?

10 MS. EVERHART: But in any --

11 THE COURT: Came with Mr. Lloyd.

12 MS. EVERHART: But Mr. Lloyd is the person who turned  
13 the gun over to Mr. Black, according to Mr. Black's testimony.

14 THE COURT: No, I understand that. I'm just saying,  
15 to try to make sense of what's happened here and why the jury  
16 would have done what they did, you're saying they didn't  
17 necessarily believe Mr. Lloyd possessed the gun in furtherance  
18 of drug activity; he was taking the gun from someone else?

19 MS. EVERHART: No, I think my -- my view of it is --  
20 and of course you never know why a jury does what they do. We  
21 can speculate. But I don't think that they found that Lloyd  
22 didn't possess it or even that it wasn't his gun, but that it  
23 wasn't being used in furtherance of the drug conspiracy. This  
24 was not a standard 924(c) where the gun is laying on the table  
25 during the drug deal. There was no drug deal occurring during

1 this event. And my argument was that it was in furtherance of  
2 the conspiracy in general, and they apparently did not buy that  
3 argument. Or that's my analysis of why they decided what they  
4 decided. But one never knows about these things.

5 THE COURT: Okay. So of the two instances, in the  
6 first instance when Lloyd and Blacks arrived to look for  
7 Mr. Woods, Lloyd had a gun there. That was -- was that before  
8 the jury?

9 MS. EVERHART: Yes. That was at Page 226. I think we  
10 looked at this earlier, Your Honor.

11 THE COURT: Well, it's your case --

12 MS. EVERHART: Yes, sir.

13 THE COURT: -- and I'm sure you have it committed to  
14 memory better than I do.

15 What is 226?

16 MS. EVERHART: Well, I think that's a wrong, an  
17 incorrect page reference.

18 THE COURT: Ms. Sullivan, what paragraph is this  
19 addressed?

20 MR. WATSON: Judge, it was Paragraph 21 of the  
21 presentence report.

22 THE COURT: Okay. Thank you.

23 And the actual enhancement?

24 PROBATION OFFICER SULLIVAN: The actual enhancement is  
25 in Paragraph 46. As well as the worksheets, obviously.



1 MS. EVERHART: Okay. It's actually 266, Your Honor.

2 THE COURT: All right. Transcript, trial transcript  
3 Page 266?

4 MS. EVERHART: Yes, Your Honor.

5 THE COURT: Okay. This was the friction discussion.  
6 I remember this. So Mr. Black says "There was another party  
7 involved in this whole scenario in Atlanta named Blacks. They  
8 came back to my house looking for Mario with guns and stuff  
9 trying to find out where he lived at, because they wanted the  
10 money. Wanted me to take him to his house.

11 "Why didn't you want Mr. Lloyd and his friends to find  
12 Mario Woods?

13 "I thought they would kill him. And he had two  
14 daughters. So that's why."

15 All right. Ms. Sullivan, was there, though, within  
16 the language of our --

17 PROBATION OFFICER SULLIVAN: It's in Paragraph 39,  
18 Your Honor.

19 THE COURT: Okay.

20 PROBATION OFFICER SULLIVAN: The very, I would say  
21 probably the last two sentences. It's Page 15.

22 THE COURT: Thank you.

23 All right. Ms. Everhart, we have Paragraph 39 and we  
24 have page 266. Go ahead.

25 MS. EVERHART: So Your Honor, clearly there was a gun

1 present during the conspiracy on both occasions, both with Mario  
2 Woods and with this other individual; that they were attempting  
3 to collect drug debts through the use of firearms, and if the  
4 gun is present and it's not, clearly not unconnected to the drug  
5 activity, then that firearm enhancement should be sustained.

6 THE COURT: All right. Mr. Watson, anything else?

7 MR. WATSON: Both gun allegations were clearly  
8 testified to as attempts to collect a drug debt. So when the  
9 jury found Mr. Lloyd not guilty of that count, unless there was  
10 some nullification, they necessarily found that he didn't  
11 possess the guns.

12 THE COURT: By a preponderance of the evidence?

13 MR. WATSON: Yes, sir.

14 THE COURT: Excuse me. Beyond a reasonable doubt.

15 MR. WATSON: Yes, sir.

16 THE COURT: Here we're at a preponderance of the  
17 evidence.

18 MR. WATSON: And that was certainly going to be my  
19 next point, was, we know -- or I would submit, that Mr. Lloyd  
20 did not possess a gun beyond a reasonable doubt. That's, I  
21 guess, the beginning and the end of what the jury told us. And  
22 realize today that we are not here under that standard, we are  
23 here under a lesser standard of the preponderance of the  
24 evidence. The commentary says that the adjustment should be  
25 applied if the weapon was present. And we certainly have